

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

NORMAN M. BELLI,  
 Plaintiff(s),

vs.

PENNY PRITZLER, et al.,  
 Defendant(s).

Case No. 2:13-cv-01839-GMN-NJK  
 ORDER  
 (Docket Nos. 9, 10, 11)

Pending before the Court is Plaintiff's motion for entry of default. Docket No. 10. Defendant filed a response in opposition and Plaintiff filed a reply. Docket Nos. 12, 13. Also pending before the Court is Defendant's motion to extend. Docket No. 11. Lastly, pending before the Court is Plaintiff's motion for default judgment. Docket No. 9. The Court finds these motions properly resolved without oral argument. *See* Local Rule 78-2. For the reasons discussed more fully below, the motions for entry of default and for default judgment are **DENIED**, while the motion to extend is **GRANTED**.

Where a party fails to plead or otherwise defend, Fed. R. Civ. P. 55(a) provides that default should be entered. Nonetheless, the Court may set aside entry of default where good cause is shown. *See* Fed. R. Civ. P. 55(c). In making that determination, the Court considers three factors: (1) whether the defendant engaged in culpable conduct that led to the default; (2) whether the defendant has a meritorious defense; and (3) whether setting aside the default would prejudice the other party. *United States v. Signed Personal Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010). The Court must also be mindful that cases should be decided on their merits whenever possible and that

1 judgment by default is appropriate only in extreme circumstances. *Id.* A determination as to what  
2 constitutes excusable neglect is at bottom an equitable one, taking into account all relevant  
3 circumstances surrounding the party's omission. *See, e.g., Brandt v. American Bankers Ins. Co. Of Fla.*,  
4 653 F.3d 1108, 1111 (9th Cir. 2011) (quoting *Pioneer Inv. Svcs. Co. v. Brunswick Assoc. Ltd.*, 507 U.S.  
5 380, 395 (1993)). Applying these standards is committed to the Court's discretion. *Id.* at 1112.

6 Courts are also especially reluctant to enter default against the Government. "When the  
7 government's default is due to a failure to plead, typically the court will either refuse to enter a default  
8 or will set aside the default." *Elliott v. Comm'r of Social Security*, 2011 WL 2836283, \*1 (W.D. Va.  
9 July 14, 2011) (citing *Mason v. Lister*, 562 F.2d 343, 345 (5th Cir. 1977)); *see also* Fed. R. Civ. P. 55(d)  
10 (prior to entry of default judgment against the government, the plaintiff must establish a claim or right  
11 to relief).

12 It is undisputed by Defendant that service was completed pursuant to Fed. R. Civ. P. 4(i). *See*  
13 Docket No. 11 at 2. In particular, Plaintiff served the United States Attorney's Office on or about  
14 January 30, 2014, and served the Department of Commerce and United States Attorney General on or  
15 about February 4, 2014. *See id.*; *see also* Docket No. 8 (summons returned executed as to United States  
16 Attorney's Office). Defendant argues that the failure to timely respond to the Complaint was the result  
17 of excusable neglect. In particular, Defendant argues that, due to an administrative error, the Department  
18 of Commerce failed to notify the United States Attorney's Office that service had been completed. *See*  
19 Docket No. 11 at 2, 3. Defendant also notes that a proof of service was not filed on the docket with  
20 respect to either the Department of Commerce or the United States Attorney General. *See id.*

21 In these circumstances, the Court finds that default is not appropriate. It is clear that Defendant's  
22 failure to appear was the result of an administrative oversight rather than the result of intentional,  
23 culpable conduct. Moreover, the delay in failing to timely appear is relatively minimal, and Plaintiff will  
24 not be prejudiced in allowing a later appearance. Accordingly, the Court will not enter default against  
25 Defendant and Plaintiff's motion for entry of default (Docket No. 10) is hereby **DENIED**.

26 In light of the above, the Court also **DENIES** as moot Plaintiff's motion for entry of default  
27 judgment (Docket No. 9).

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1           Lastly, the Court **GRANTS** Defendant's motion for an extension to respond to the Complaint  
2 (Docket No. 11). Defendant's response to the Complaint shall be filed no later than June 4, 2014.

3           IT IS SO ORDERED.

4           DATED: May 28, 2014.

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8 NANCY J. KOPPE  
9 United States Magistrate Judge  
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